Filed 7/30/02 Alvarez v. Gramercy Escrow CA2/1

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

MARIA F. ALVAREZ, Plaintiff and Appellant, v. GRAMERCY ESCROW CORPORATION, et al., Defendants and Respondents.	B145119 (Super. Ct. No. NC017653)

APPEAL from judgments and orders of the Superior Court of Los Angeles County, Margaret M. Hay, Judge. Affirmed.

Maria F. Alvarez, in pro. per., for Plaintiff and Appellant.

S. Roger Rombro for Defendants and Respondents.

INTRODUCTION

Plaintiff Maria F. Alvarez appeals from an August 18, 1997 order denying her motion for reconsideration; an October 8, 1997 judgment on her complaint; a November 25, 1997 order granting defendant Gramercy Escrow Corporation's motion for new trial

on its cross-complaint, for reconsideration and for sanctions; a September 29, 2000 judgment on the cross-complaint; and a September 29, 2000 order awarding monetary sanctions to defendants Gramercy Escrow Corporation and Ted J. Hicks.

This is the second appeal in this action. Plaintiff previously filed an appeal from the August 18, 1997 order denying her motion for reconsideration and the October 8, 1997 judgment on her complaint. We dismissed the appeal based on plaintiff's failure to demonstrate the appeal was taken from an appealable order or judgment. (*Alvarez v. Gramercy Escrow Corporation* (B117817, Jan. 29, 1999) typed opn. pp. 8, 12.) We now affirm the judgments and orders.

FACTUAL AND PROCEDURAL BACKGROUND

"Plaintiff filed a complaint in municipal court for breach of contract, common counts and fraud against defendants Gramercy Escrow Corporation (Gramercy) and Ted J. Hicks (Hicks).[**1**] The basis of the complaint was an alleged misappropriation of funds in an escrow account.

"Attached to the complaint is an offer to buy, in which Fern Welch and Charles Martin offered to buy the Allstate Cocktail Lounge from plaintiff. The offer stated a check was received from Fern Welch, to be deposited in an escrow opened with Gramercy.

"Escrow instructions from Gramercy, also attached to the complaint, identify the sellers of the Allstate Cocktail Lounge as the Estate of Robert H. Everett and the Estate of Mae K. Everett, by plaintiff as the executrix of the Estate of Mae K. Everett, who was the sole heir of Robert H. Everett.

"Defendants demurred to the complaint. They claimed the complaint failed to state a cause of action, in that plaintiff lacked standing to sue. Accompanying the

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1 "Also named in the complaint were Action Business Investments, Al Tossas and Gloria Beaver. They are not parties to this appeal."

demurrer was a request for judicial notice of the following facts: Stock in the Allstate Cafe Cocktail Lounge, Inc. was issued to Robert Everett, Thomas Everett and Mae K. Everett on November 23, 1977; the issuance of the stock was canceled on December 8, 1977; the corporation was suspended by the state on August 1, 1988; there was no probate of the Estate of Robert H. Everett or the Estate of Mae K. Everett in Orange County; and plaintiff is an attorney. Defendants also requested the court take judicial notice of Robert H. Everett's death on June 10, 1983 and Mae K. Everett's death on February 9, 1990.

"The demurrer was overruled. Defendants filed an answer to the complaint, asserting plaintiff's lack of standing as an affirmative defense. Concurrently therewith, they filed a cross-complaint in interpleader and for declaratory relief. Listed as cross-defendants were plaintiff, the estates of the Everetts, Fern Welch and Charles Martin, the Internal Revenue Service, the Franchise Tax Board, the Employment Development Department, the Los Angeles County Treasurer and Tax Collector, Michael Guyer, Somerset Distributors, Inc., Bohemian Distributing Company, Coors Distributing Company, Keith C. Ferguson Co., Inc. and Action Business Investment. Defendants sought a determination as to the right to the funds held in escrow.

"On defendants' motion, the case thereafter was transferred to superior court. The amount in controversy exceeded the municipal court's jurisdictional limit.

"Plaintiff then filed a demurrer to and motion to strike the cross-complaint. The demurrer was sustained without leave to amend; the motion to strike was taken off-calendar as moot.[**2**]

"Plaintiff prepared a trial brief as well as a motion in limine to preclude evidence of her lack of standing to enter into the sale and escrow agreements; the motion was based on estoppel principles. Defendants also prepared a trial brief, in which they argued plaintiff's lack of standing to bring the action.

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2 "Apparently, the demurrer was sustained to the interpleader portion of the cross-complaint on the ground defendants were not disinterested stakeholders."

"When the case was called for trial on July 7, 1997, the trial court proposed to have a trial on the standing issue before proceeding any further. At the trial, it was stipulated that Robert H. Everett and Mae K. Everett had died; no probate of either's estate had been filed. Plaintiff testified that Robert and Mae Everett were her adopted parents. She did not at that time have papers supporting her testimony to that effect.

"Plaintiff testified that after Robert Everett died in 1983, Mae Everett prepared an agreement giving plaintiff 'the authority to take her shares [in the Allstate Cafe Cocktail Lounge] and act on her behalf if something happened to her.' An objection to this testimony was sustained under the best evidence rule. Plaintiff produced the agreement, which was admitted into evidence. Plaintiff stated she believed the agreement gave her the authority to sell the Allstate Cafe Cocktail Lounge.

"On cross-examination, plaintiff acknowledged that on the escrow instructions, she crossed out the identification of herself as executrix and wrote in 'administratrix.' The escrow instructions she signed referred to the Estates of Robert H. Everett and Mae K. Everett. She also testified that she telephoned Hicks and told him to put her name on the documents as the owner of the stock being transferred rather than as the administratrix; she never sent him a letter making that request, however.

"The trial court found that plaintiff, 'although with the best intentions of the world and seeking to do wrong to nobody, nevertheless has not complied with [probate] regulations and compliance is mandatory.' Her failure to comply left her without standing to bring this lawsuit. It therefore dismissed the complaint without prejudice. There remained a question regarding attorneys' fees and an interpleaded promissory note; the trial court requested further briefing on these issues. As to other issues raised in the cross-complaint, the cross-complaint was dismissed.

"On July 17[,] 1997, plaintiff filed a 'motion for reconsideration of motion to dismiss under C.C.P. Sec. 597.' The motion was made pursuant to Code of Civil Procedure section 1008, subdivision (a), based on the following new facts: 'A declaration under Probate Code Section 13100 et seq. has been made and delivered to the legal holder of the shares of stock of the Allstate Cafe and Cocktail Lounge, Inc., thereby

authorizing the transfer of ownership of the shares to plaintiff . . . , eliminating the shares from any estate of Mae K. Everett or Robert H. Everett and obviating the need for any probate proceeding' and giving plaintiff standing to bring the action. The attached declaration was signed by plaintiff on July 16, 1997 and made effective as of March 27, 1990. Plaintiff also attached a copy of her birth certificate. Defendants opposed the motion and objected to some of the evidence presented in support thereof." (*Alvarez v. Gramercy Escrow Corporation, supra,* typed opn. at pp. 2-5.)

Defendants filed a motion for costs and sanctions on August 1, 1997. The motion was made under Code of Civil Procedure section 128.5 on the ground plaintiff's complaint was frivolous. Defendants also claimed that plaintiff's motion for reconsideration was a further abuse of the judicial process. Plaintiff opposed the motion and objected to some of the evidence presented in support of the motion. Defendants filed objections to plaintiff's evidence.

The trial court heard plaintiff's motion for reconsideration on August 18, 1997. At the hearing, "the trial court explained there was no motion to dismiss but rather a trial under Code of Civil Procedure section 597. Thus, the trial court erred in ruling the complaint was dismissed; rather, judgment should be entered in defendants' favor on the complaint. It deemed plaintiff's motion for reconsideration to be a motion for a new trial. It denied this motion on the ground plaintiff presented nothing 'which with due diligence could not have been produced at or before trial.' It took the remaining matters under submission.

"On September 15, 1997, plaintiff was appointed special administrator of the Estates of Robert H. Everett and Mae K. Everett. On October 31, 1997, plaintiff filed a second complaint against Gramercy, Hicks, Al Tossas, Action Business Investments and Gloria Beaver; this action was in her name as administrator of the Estate of Mae K. Everett.

"On October 8, 1997, the trial court in the instant action issued a minute order stating that under Code of Civil Procedure section 597, the court heard the special defense of lack of standing. It found plaintiff lacked standing to sue and judgment was

entered for defendant. The interpleader cause of action in the cross-complaint was dismissed in its entirety, in that defendants were not disinterested stakeholders. On the second cause of action, by which defendants actually sought indemnification, judgment was granted in favor of plaintiff on the ground of plaintiff's lack of standing. It also was granted in favor of cross-defendants Fern Welch and Charles Martin. . . ." (*Alvarez v. Gramercy Escrow Corporation, supra*, typed opn. at pp. 5-6, fn. omitted.)

At the same time, the trial court denied defendants' motion for sanctions on the ground of unclean hands. It found plaintiff's lack of standing was apparent on the face of the complaint. Defendants could have avoided much of the litigation at an early stage and thus avoided incurring the attorney's fees sought in the motion. Additionally, defendants entered into a contract with the estates of the Everetts and thus had the responsibility of ensuring that they were dealing with the proper representative of the estates.

Defendants thereafter moved for a new trial on the cross-complaint and reconsideration or relief from default on their motion for sanctions. Following a hearing on November 18, 1997, this motion was granted. The trial court noted that the only evidence presented at the previous hearing was on the affirmative defense of lack of standing. Additionally, the court thought it had incorrectly determined the interpleader cause of action: it made its determination prematurely and should hear evidence on the matter. It also believed it should not have ruled on defendants' second cause of action, in that the matter was not before the court, and it should not have based any rulings on the clean hands doctrine, which was not raised in the pleadings. The court stated: "A mistake has been made. Far better to look into the matter and to remedy it at this stage."

As to the request for reconsideration of the motion for sanctions, the trial court noted that "[b]oth sides concede[d] that the ruling was made without the merits having been heard." The court therefore had not heard evidence on the matter. For that reason, it granted the motion for reconsideration.

"On December 6, 1997, plaintiff filed a notice of appeal from the '[j]udgment for Defendants entered on October 8, 1997' as well as the August 18, 1997 order denying her

motion for reconsideration." (*Alvarez v. Gramercy Escrow Corporation, supra,* typed opn. at p. 6.)

On December 31, 1997, plaintiff filed a motion for relief from default under Code of Civil Procedure section 473. She challenged defaults entered against the estates of the Everetts on July 1, 1977 on defendants' cross-complaint.[3]

On January 22, 1998, plaintiff moved to consolidate this action with the second action she filed as well as with a probate action and to transfer all three to the probate court. Defendants opposed the motion, arguing inter alia that since plaintiff had filed a notice of appeal, the court of appeal had sole jurisdiction over this action. Defendants also opposed plaintiff's motion for relief from default.

At a hearing on February 17, 1998, the trial court denied plaintiff's motion to consolidate the three actions. On her motion for relief from default, the court noted plaintiff had failed to file proposed pleadings but it said it would allow her to file proposed pleadings. Defense counsel opined that it would not benefit defendants to proceed against the estates and requested dismissal of the estates from the cross-complaint. The court granted the dismissals without prejudice.

Fern Welch and Robert Martin moved for a judgment on the pleadings in the action on defendants' cross-complaint. Plaintiff filed a joinder in the motion on December 24, 1998.

We filed our opinion on plaintiff's appeal on January 29, 1999. As previously stated, we dismissed the appeal for failure to demonstrate the appeal was taken from an appealable order or judgment. (*Alvarez v. Gramercy Escrow Corporation, supra,* typed opn. pp. 8, 12.) We noted, in any event, that the trial court did not err in granting judgment to defendants on plaintiff's complaint under Code of Civil Procedure section 597 based on lack of standing. (*Id.* at pp. 8-9.) We also noted that the trial court did not err in denying her motion for reconsideration. (*Id*. at pp. 10-11.)

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3 Plaintiff has failed to include a copy of this motion in the record on appeal.

The trial court then held a hearing on defendants' motion for costs and sanctions. The hearing took place over a period of several months. On August 4, 2000, the trial court issued a proposed statement of decision granting the motion. Plaintiff filed objections to the proposed statement of decision and submitted her own proposed ruling on the motion. Following a hearing on September 8, the court overruled plaintiff's objections and approved the proposed ruling. It stayed entry of the order until September 29, when the case was set for trial on defendants' cross-complaint.

On the motion for costs and sanctions, the trial court made extensive factual findings concerning the transaction underlying plaintiff's complaint, the sale of the Allstate Cafe and Cocktail Lounge and the escrow established with defendants. It found that the Everetts owned and operated the Allstate Cafe and Cocktail Lounge Incorporated. Robert H. Everett died on June 10, 1983. On July 1, 1983, Mae Everett K. and plaintiff agreed that plaintiff would have control over the business when Mae K. Everett died. On August 1, 1988, the Secretary of State suspended the corporation. On February 9, 1990, Mae Everett died.

Plaintiff sold the Allstate Cafe and Cocktail Lounge to Fern Welch (Welch) and Charles Martin (Martin). She opened escrow with Gramercy on September 17, 1990. She signed the escrow instructions as the representative of the estates of Robert H. Everett and Mae K. Everett even though no probate had been opened on either estate. She identified herself as the sole heir of the estates, even though she had a brother living.

A promissory note for $40,000 payable to the estates and dated September 17, 1990 was placed into escrow. The escrow instructions provided that escrow would close upon approval of the buyers by the Department of Alcoholic Beverage Control (ABC) and issuance of a license by the ABC. At the close of escrow, Gramercy was to pay its fees and a broker's commission. In addition, Hicks wrote to plaintiff requesting letters of administration for the Estate of Mae K. Everett and documentation of the probate of the Estate of Robert H. Everett.

Plaintiff told Welch that she was an attorney and instructed Welch to sign a second promissory note for $40,000 dated September 17, 1990, payable to plaintiff. Plaintiff

told Welch and Martin to make payments directly to her under this second promissory note and not to make any payments on the original promissory note in escrow. Defendants were not informed about the second note or that plaintiffs would not be making payments under the original note in escrow.

Then, in October 1990, plaintiff, as president of the Allstate Cafe and Cocktail Lounge, Inc., which was still suspended as a corporation, issued 300 shares of stock to herself. She transferred the shares to Welch and Martin. Welch presented documentation of the transfer to the ABC in an application for transfer of the Allstate Café Cocktail Lounge's alcohol license.

Gramercy made a notice of bulk sale and received several claims. Gramercy wrote to lienholders Franchise Tax Board (FTB), Internal Revenue Service (IRS) and Employment Development Department (EDD) for formal claims, notifying plaintiff of this. Gramercy received claims from the IRS for $1,013.50, from the State of California for $261, from the EDD for $3,494.22, and from supplier Keith C. Ferguson Co., Inc. for $2,065.23.

On November 26, 1990, the ABC notified Gramercy that the "stock transfer application involving license has been approved. License will be issued when we receive information from our District Office that stock has been transferred." The operating period was to be January 7, 1991 through December 31, 1991. Following receipt of this notification, Hicks contacted the ABC office in Sacramento and determined that stock certificates in the names of Welch and Martin had been presented to the local ABC office. The license was issued by January 7, 1991. On November 29, Gramercy paid fees to the broker, Action Business Investments, and to itself. At that time, there were sufficient funds in escrow to pay all known creditors based on reports from the Secretary of State and the Los Angeles County Recorder.

In December 1990, defendants received notice of an IRS lien in the amount of $28,165.77 and an FTB lien in the amount of $7,332. Defendants informed plaintiff of these liens. Defendants also were notified of an EDD lien of $3,193.88. On April 29, 1991, defendants wrote to creditors, sending copies of the letters to plaintiff and to Welch

and Martin, letting them know that the parties were not complying with the terms of the escrow. A list of creditors' claims totaling $48,639 was attached to the letter. Defendants indicated that there was $20,000 in cash and a promissory note for $40,000 in escrow. If payments were made on the promissory note, there would be enough money available to pay all claims. Defendants also indicated that extraordinary fees were being billed and attorney's fees might also be billed.

Plaintiff and Welch and Martin authorized defendants to pay $11,672.82 to the IRS on May 15, 1991. Plaintiff told Welch that she was negotiating interest and penalties with the IRS. Defendants heard nothing more from plaintiff or Welch and Martin until September 1993, when Martin contacted them for information. In October 1993, defendants received a notice of levy from the EDD and informed plaintiff and Welch and Martin of this.

Based on the foregoing facts, the trial court found that plaintiff had failed to introduce any evidence of fraud or misrepresentation on the part of defendants. She also failed to show any damage resulting from defendants' actions. Rather, she was damaged by her own fraudulent concealment of information from defendants. The court concluded "that no reasonable attorney would have filed the instant lawsuit, but that it was filed in bad faith and solely to harass Gramercy and Hicks."

The trial on defendants' cross-complaint was held on September 29, 2000. On that same date, the trial court filed a first amended ruling and order on defendants' motion for sanctions, awarding sanctions in the amount of $70, 000. On November 30, the trial court issued a proposed judgment in the action. On the complaint, the proposed judgment was in favor of defendants and against plaintiff. On the cross-complaint, first cause of action for interpleader, the proposed judgment was in favor of Gramercy and against Welch, Martin, the Estate of Mae K. Everett, and the IRS. The court noted the Los Angeles County Tax Collector, the EDD and the FTB disclaimed interest in the interpleaded funds. The court further noted that the proposed judgment did not affect the award of attorney's fees and costs to defendants and against plaintiff on defendants' motion for sanctions.

Plaintiff objected to the proposed judgment and filed her own proposed judgment. As personal representative of the Estate of Mae K. Everett, she filed a notice of intent to move for new trial and/or motion for relief from default, seeking relief from the judgment on the cross-complaint. Defendants filed opposition to the motion for new trial/relief from default.

On January 29, 2001, the trial court denied the motion for new trial/relief from default. It overruled plaintiff's objections to the proposed judgment, ruling that the judgment would stand.

CONTENTIONS

I

Plaintiff contends the trial court erred in setting aside its initial order denying sanctions and granting defendants' motion for reconsideration without any showing of changed facts or law. We disagree. The trial court had the inherent authority to act as it did.

II

Plaintiff further contends the trial court's award of sanctions is void, in that the court lacked authority to hold a trial on the merits of plaintiff's complaint. The contention is without merit. Plaintiff misperceives the nature of the trial court's actions.

III

Plaintiff also asserts that, to the extent the trial court had authority to hold a trial on the merits of her complaint, it abused its discretion and denied her due process in its

conduct of the proceedings. Plaintiff has failed to demonstrate any abuse of discretion or denial of due process, however.

IV

Finally, plaintiff contends the evidence is insufficient to support the award of sanctions. Plaintiff also has failed to demonstrate any insufficiency of the evidence.

DISCUSSION

I

Code of Civil Procedure section 1008 provides that when an application for an order has been made and the trial court has granted or denied it, a party may apply to the trial court "to reconsider the matter and modify, amend, or revoke the prior order." (Subd. (a).) The application must be "based upon new or different facts, circumstances, or law." (*Ibid*.) The party seeking reconsideration must show not only new or different facts, circumstances or law but also a satisfactory explanation for the failure to produce any new evidence earlier. (*Berman v. Health Net* (2000) 80 Cal.App.4th 1359, 1369; *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 690.)

Code of Civil Procedure section 1008 notwithstanding, the trial court retains the ability to reconsider its interim rulings on its own motion and to change those rulings at any time prior to entry of judgment. (*Darling, Hall & Rae v. Kritt* (1999) 75 Cal.App.4th 1148, 1156; *Bernstein v. Consolidated American Ins. Co.* (1995) 37 Cal.App.4th 763, 774.) "Section 1008 is designed to conserve the court's resources by constraining litigants who would attempt to bring the same motion over and over. On the other hand, these same judicial resources would be wasted if the court could not, on its own motion, review and change its interim rulings." (*Darling, Hall & Rae, supra*, at p. 1157.) The

only constraint on the court is that it must "exercise 'due consideration' before modifying, amending, or revoking its prior orders." (*Ibid*.)

It is irrelevant that "the judge was not acting sua sponte but reconsidered in response to a litigant's motion [for reconsideration]. We find this to be a distinction without a difference. Whether the trial judge has an unprovoked flash of understanding in the middle of the night or is prompted to rethink an issue by the stimulus of a motion," it is within the judge's inherent power to correct his or her own rulings. (*Remsen v. Lavacot* (2001) 87 Cal.App.4th 421, 427.)

In other words, whether or not the requirements of Code of Civil Procedure section 1008 were met, the trial court had the inherent power to reconsider its order denying sanctions when defendants made their motion for reconsideration. It granted reconsideration due to its failure to hold a hearing on the merits of the motion for sanctions. This was an error of law and a proper basis for reconsideration. The trial court clearly exercised due consideration in granting reconsideration of defendants' motion for sanctions. (*Darling, Hall & Rae v. Kritt*, *supra*, 75 Cal.App.4th at p. 1157.) Accordingly, the trial court did not err.

II

As plaintiff points out, if the trial court reaches a decision in favor of defendants following a trial under Code of Civil Procedure section 597, on a defense not on the merits of the case, "judgment for the defendant[s] shall thereupon be entered and no trial of other issues in the action shall be had." The trial court here did not violate section 597 by conducting a trial on the other issues in the action, i.e., the merits of plaintiff's complaint, after finding in favor of defendants on the defense of plaintiff's lack of standing. The trial court examined the merits of plaintiff's complaint in conjunction with a hearing on defendants' motion for sanctions under Code of Civil Procedure section 128.5. Inasmuch as defendants' motion was made on the ground plaintiff's complaint

was frivolous, it was necessary to examine the merits of plaintiff's complaint in order to determine defendants' motion.

A trial court may award sanctions under Code of Civil Procedure section 128.5 for "actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Subd. (a).) The filing of a complaint is an action or tactic within the meaning of this section. (*Id*., subd. (b)(1).) An action or tactic is frivolous if it is "(A) totally and completely without merit or (B) for the sole purpose of harassing an opposing party." (*Id*., subd. (b)(2); *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 649-650.)

An award of sanctions under this section is confided to the sound discretion of the trial court. (*Bach v. McNelis* (1989) 207 Cal.App.3d 852, 878.) Our review of the trial court's award is limited to the determination as to whether there has been an abuse of discretion resulting in a miscarriage of justice. (*Sabek, Inc. v. Engelhard Corp.* (1998) 65 Cal.App.4th 992, 1001.) Discretion is abused when a decision is arbitrary, capricious or patently absurd and results in a manifest miscarriage of justice. (*People v. Jordan* (1986) 42 Cal.3d 308, 316; *People v. Franco* (1994) 24 Cal.App.4th 1528, 1543.) Discretion also is abused when a decision is not supported by substantial evidence. (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479.)

The trial court found that plaintiff had failed to introduce any evidence of fraud or misrepresentation on the part of defendants. She also failed to show any damage resulting from defendants' actions. Rather, she was damaged by her own fraudulent concealment of information from defendants. The court concluded "that no reasonable attorney would have filed the instant lawsuit, but that it was filed in bad faith and solely to harass Gramercy and Hicks."

Plaintiff first argues the evidence showed that her bringing the complaint in her individual capacity was not frivolous. Inasmuch as the award of sanctions was not based upon plaintiff's filing her complaint in her individual capacity, this argument has no bearing on our resolution of the question whether the trial court abused its discretion in awarding sanctions.

Plaintiff next argues that the trial court failed to apply the mandatory requirements of Business and Professions Code section 24074 and 24074.1 to defendants' performance under the escrow agreement. Plaintiff fails to explain how this renders the trial court's award of sanctions an abuse of discretion. Plaintiff's burden on appeal is both to show error and to show prejudice resulting therefrom. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; *Robbins v. Los Angeles Unified School Dist.* (1992) 3 Cal.App.4th 313, 318.) Plaintiff has failed to meet her burden on appeal.

Plaintiff further claims the trial court applied an erroneous legal standard for the interpretation of a contract with a fiduciary. Again, plaintiff fails to explain how this renders the trial court's award of sanctions an abuse of discretion and fails to meet her burden on appeal. (*Ballard v. Uribe*, *supra,* 41 Cal.3d at p. 574; *Robbins v. Los Angeles Unified School Dist.*, *supra*, 3 Cal.App.4th at p. 318.)

Plaintiff states that the trial court failed to allow her to introduce evidence of her brother's assignment to her of his inheritance rights. She fails to cite the record in support of her statement or to argue that this was error or prejudicial. "We discuss those arguments that are sufficiently developed to be cognizable. To the extent [plaintiff] perfunctorily asserts other claims, without development and, indeed, without a clear indication that they are intended to be discrete contentions, they are not properly made, and are rejected on that basis." (*People v. Turner* (1994) 8 Cal.4th 137, 214, fn. 19.)

Next, plaintiff claims the trial court erred in finding she suffered no damages from defendants taking a share of the escrow proceeds before paying the tax liens. She cites nothing in the record and no authority in support of this claim. Meeting the burden on appeal of demonstrating error requires citations to the record to direct the court to the pertinent evidence or other matters in the record which demonstrate error. (Cal. Rules of Court, rule 14(a); *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.) It also requires citation to relevant authority and argument. (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545-546; *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282.) Plaintiff's failure to meet her burden waives her claim. (*Mansell, supra,* at pp. 545-546; *Dougherty*, *supra*, at p. 282.)

Finally, plaintiff objects to inclusion of $429.42 in costs, in that the trial court lacked authority to grant costs on appeal. Again, she cites nothing in the record and no authority in support of this claim, waiving it. (*Guthrey v. State of California, supra,* 63 Cal.App.4th at p. 1115; *Mansell v. Board of Administration*, *supra*, 30 Cal.App.4th at pp. 545-546.)

III

Plaintiff first complains about the manner in which the trial court conducted the hearing on defendants' motion for sanctions and the amount of time allowed her to present her case. Plaintiff cites nothing in the record and no authority in support of her complaint. Accordingly, any challenge to the manner in which the hearing was conducted has been waived. (*Guthrey v. State of California, supra,* 63 Cal.App.4th at p. 1115; *Mansell v. Board of Administration, supra*, 30 Cal.App.4th at pp. 545-546.)

Plaintiff next argues that the trial court erred in concluding she defrauded defendants. She claims that defendants, as mere stakeholders of the escrow proceeds, could not be defrauded, while she, as the heir of the estates of the Everetts, had "at least a colorable claim of ownership in the proceeds which negates that her receiving the note and payments was wrongful." In support of this claim, she cites *Graybiel v. Burke* (1954) 124 Cal.App.2d 255, 261-262, which holds that the administrator of a decedent's estate has the right to possession of the decedent's property and may bring an action in his or her own name for possession of that property. *Graybiel* does not support the proposition that an escrow holder cannot be defrauded by the party entitled to the proceeds from the escrow. Absent authority and argument in support of her argument, it is waived. (*Mansell v. Board of Administration, supra,* 30 Cal.App.4th at pp. 545-546; *People v. Dougherty*, *supra*, 138 Cal.App.3d at p. 282.)

IV

When the trial court's factual determinations have been challenged on appeal, the scope of appellate review is limited to a finding of whether substantial evidence exists which will support the trial court's conclusion. (*Hellman v. La Cumbre Golf & Country Club* (1992) 6 Cal.App.4th 1224, 1229.) Substantial evidence is evidence of ponderable legal significance. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873.) The trial court's findings of fact will be reversed on appeal only if they are unsupported by substantial evidence. (*Watson v. Department of Rehabilitation* (1989) 212 Cal.App.3d 1271, 1289.)

On appeal, this court views the entire record to determine if there is substantial evidence, contradicted or uncontradicted, which supports the findings. (*Bowers v. Bernards*, *supra*, 150 Cal.App.3d at pp. 873-874.) The trial court, as trier of fact, has the duty to weigh and interpret the evidence and draw inferences therefrom. (*In re Cheryl E.* (1984) 161 Cal.App.3d 587, 598.) This court cannot reweigh the evidence or draw contrary inferences. (*Ibid.*) Thus, it must resolve all conflicts in the evidence and draw all reasonable inferences in favor of the findings. (*Watson v. Department of Rehabilitation*, *supra*, 212 Cal.App.3d at p. 1289.) Evidence accepted by the trial court as true may not be rejected by the appellate court unless it is physically impossible or its falsity is obvious without resort to inference or deduction. (*Watson*, *supra*, at p. 1293.)

Further, "'"[i]t is well established that a reviewing court starts with the presumption that the record contains evidence to sustain every finding of fact." [Citations.] [Plaintiff's] contention herein "requires [her] to demonstrate that there is *no* substantial evidence to support the challenged findings." (Italics added.) [Citations.] A recitation of only [plaintiff's] evidence is not the "demonstration" contemplated under the above rule. [Citation.] Accordingly, if, as [plaintiff] here contend[s], "some particular issue of fact is not sustained [she is] required to set forth in [her] brief *all* of the material evidence on the point and *not merely [her] own evidence*. Unless this is done the error is

deemed to be waived."'" (*People v. Dougherty, supra,* 138 Cal.App.3d at p. 282, italics in the original.) In addition to setting forth the evidence, as previously stated, plaintiff must provide citations to the record, appropriate argument and authority in support of her contentions. (*Ibid.*)

Plaintiff has failed entirely to meet her burden. She simply reviews the first amended ruling and order on defendants' motion for sanctions, paragraph by paragraph, setting forth her disagreement with the trial court's findings. She refers to some evidence in support of some of her disagreements, but she usually does not cite any page in the record where such evidence can be found. She does not put together a cogent argument explaining why the totality of the evidence does not support the trial court's order imposing sanctions. She cites no authority in support of the points she attempts to make or in support of the conclusion that the trial court's order is not supported by substantial evidence. Accordingly, her contention must be deemed waived. (*Mansell v. Board of Administration, supra*, 30 Cal.App.4th at pp. 545-546; *People v. Dougherty, supra,* 138 Cal.App.3d at p. 282.)

The judgments and orders are affirmed.

NOT TO BE PUBLISHED

SPENCER, P.J.

We concur:

ORTEGA, J.

MALLANO, J.